

Medical devices used for diagnostic or treatment purposes do not qualify for the reduced rate of tax for medical appliances. See 86 Ill. Adm. Code 130.310(c). (This is a GIL.)

June 30, 2004

Dear Xxxxx:

This letter is in response to your e-mail dated March 22, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have another question and I hope if you can't help me you can point me in the right direction.

I have a client who leases medical beds, walkers, wheelchairs, etc... to various nursing home facilities and hospitals. He is a STATE Limited Liability Company. My question is this, does he have to charge sales tax on the items he leases his customers?

There are instances where he will sell them a bed, would he have to charge sales tax to these customers if they weren't tax exempt organizations?

He will be registered to do business in Illinois and will have a sales rep in Illinois also.

Please give me some guidance.

For general information purposes please refer to 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation Tax and Use Tax Purposes. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two

types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. Such would be the case when the agreements contain nominal purchase options at the end of the lease term. In these situations Retailers' Occupation Tax is due on all the payments received by the "lessors." Interest or finance charges may be excluded from gross receipts under installment contracts if the books of the retailers clearly reflect the amounts of the payments attributable to financing. See 86 Ill. Adm. Code 130.420.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax Obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. There are also some limited exceptions to the general rule described in the preceding paragraphs. There is an exemption from Retailers' Occupation Tax for sales of tangible personal property to lessors who lease that property to governmental bodies under a lease of one year or longer. See 86 Ill. Adm. Code 130.2012. In addition, the sale of computers and communications equipment and equipment used in the diagnosis, analysis, or treatment of hospital patients is exempt when sold to lessors who lease that property under leases of one year or longer with hospitals to whom the Department has issued a tax exemption identification number. See 86 Ill. Adm. Code 130.2011.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Medicines and medical appliances are not taxed at the general merchandise rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescriptions and nonprescription medicines, drugs, medical appliances, insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medical appliance is defined as any item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate. Generally, medical tools, devices and equipment used for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced rate of tax for medical appliances as such items, while being used for treatment of patients, are not directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c).

Wheelchairs and walkers qualify for the low rate of tax. However, hospital beds, patient lift systems, bed trapezes, and shower/commode chairs do not generally qualify for the low rate of tax. In order to qualify for the lower rate of tax as a medical appliance, the item must directly substitute for a malfunctioning part of the body. These items do not meet this requirement.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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Associate Counsel

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